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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JERRY J. COFIELD et al.,

Plaintiffs and Respondents,

v.

KIA MOTORS AMERICA, INC.,

Defendant and Appellant.

F074977, F075811

(Super. Ct. No. S1500CV283504)

OPINION

APPEAL from a judgment and order of the Superior Court of Kern County. Sidney P. Chapin, Judge.

Baker Manock & Jensen, James A. Ardaiz and J. Jackson Waste; Whitney Thompson & Jeffcoach and James A. Ardaiz for Defendant and Appellant.

Rosner, Barry & Babbitt, Hallen D. Rosner and Arlyn L. Escalante for Plaintiffs and Respondents.

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Defendant Kia Motors America, Inc. (Kia) appeals from a judgment entered in favor of plaintiffs Jerry and Jackie Cofield (the Cofields) under the Song-Beverly

Consumer Warranty Act (the Song-Beverly Act) (Civ. Code, § 1790 et seq.).[1] In the trial below, the Cofields presented evidence that their 2010 Kia Forte had certain defects that were allegedly not resolved within a reasonable number of repair attempts, including a problem with the electrical system and an issue of engine oil consumption or leakage. Kia countered with testimony that these problems were due to plaintiff Jerry Cofield's misuse of the vehicle and/or failure to maintain it properly. Kia also asserted that if there were any defects, they were timely repaired. After all the evidence was presented, the jury decided in favor of the Cofields, finding on the special verdict form that the Kia Forte purchased by the Cofields had a defect or defects covered by the written warranty and that Kia or its authorized repair facility failed to repair the vehicle to conform to the warranty after a reasonable number of opportunities to do so. The jury awarded damages to the Cofields under the Song-Beverly Act, including a civil penalty based on a separate finding that Kia willfully failed to repurchase or replace the vehicle. After judgment was entered, the trial court awarded attorney fees to the Cofields in the sum of $296,055.

In the instant appeal, Kia argues the trial court reversibly erred on the following grounds: (1) the special verdict was fatally defective, (2) the trial court's denial of Kia's motion in limine allowed the jury to hear prejudicial evidence of post-warranty repairs, (3) the finding of a willful violation was not supported by substantial evidence, and (4) the attorney fee award was so large it was an abuse of discretion.[2] As explained below, we conclude that Kia has not established any of the asserted grounds for reversal. Accordingly, the judgment and order of the trial court are hereby affirmed.

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[1] Unless otherwise indicated, all further statutory references are to the Civil Code.

[2] In addition to filing an appeal from the judgment (F074977), Kia separately appealed from the trial court's order granting attorney fees (F075811). We consolidated the two appeals under case No. F074977.

FACTS AND PROCEDURAL HISTORY

A. The Cofields' Purchase and Use of the Vehicle

On December 5, 2010, the Cofields purchased a new 2010 Kia Forte (the vehicle) from Haddad Dodge Kia in Bakersfield, California (the dealership). The vehicle was sold to the Cofields with Kia's 5-year/60,000-mile bumper-to-bumper express warranty, and a 10-year/100,000-mile power train express warranty.

The vehicle was unquestionably put to extensive or heavy use. Plaintiff Jerry Cofield (Mr. Cofield) drove the vehicle while working as a delivery person for a newspaper delivery company. His daily delivery route entailed 142 miles of driving from the Bakersfield area to rural truck stops and mountain communities such as Frazier Park and Pine Mountain. The route required him to traverse at least one dirt road. Mr. Cofield estimated he may put as much as 5,000 miles on the vehicle each month. According to defense counsel's calculations, the vehicle was driven by the Cofields between 40,000 to 45,000 miles per year. By the time of trial in 2016, the vehicle had 215,000 miles on the odometer.

Mr. Cofield would ordinarily change the oil and oil filters on the vehicle himself, although he would sometimes have the dealership do so if the vehicle was already being serviced for other repair or maintenance work. Mr. Cofield's testimony was that he would change the oil and filters (and perform other minor maintenance) much earlier or more frequently than the owner's manual suggested as a proactive measure to extend the life of the vehicle. He and his wife kept meticulous records of his maintenance and receipts for oil and filter purchases. The records were provided to the dealership and to Kia.

B. Repair History

The bulk of the testimony at trial relating to the condition of the vehicle focused on three distinct problem areas that were presented to the dealership by the Cofields for repairs under the warranty: (i) wheel or rim issues, (ii) engine oil consumption, and (iii) a

faltering electrical system. The dealership's status as an authorized repair facility for Kia relating to the vehicle warranty is not disputed.

1. Wheel or Rim Issues

On December 30, 2010, the Cofields brought their vehicle to the dealership asserting that a hubcap needed to be replaced. Five days later, the Cofields returned to the dealership for a second repair because the wheels were wobbling. At that time, the mileage on the car was 1,700 miles. The dealership confirmed that two of the vehicle's wheels or rims were bent or out-of-round, and replacement parts were ordered. On January 19, 2011, the Cofields returned to the dealership and the wheel rims were replaced under the warranty.

2. Engine Oil Consumption or Leakage

On May 16, 2012, the Cofields took the vehicle to the dealership for oil and filter service and to conduct a dye test to check for an oil leak. On May 24, 2012, when the vehicle's mileage was at 31,402, the Cofields presented the vehicle to the dealership again because it was apparently burning excessive oil. On May 29, 2012, the Cofields presented their vehicle to the dealership yet again due to the same oil consumption issue. The dealership verified the validity of the Cofields' concerns and, in attempting to resolve the problem, kept the vehicle in its possession for a period of approximately 50 days. In the end, the dealership replaced the entire engine "short block." Not long after the Cofields picked up the vehicle from the dealership following the 50 days, the Cofields returned the vehicle to the dealership once again because it was still leaking oil. The dealership verified the Cofields' complaint was accurate. Another repair effort was undertaken.

The last repair effort apparently succeeded. Mr. Cofield did not notice any further excessive oil consumption or leaks after that time. Nonetheless, the Cofields' position was that Kia took more than a reasonable number of repair attempts, particularly when the amount of time the vehicle was out of commission was considered—i.e., over 50

days. On the latter point, the Cofields emphasize the Song-Beverly Act generally requires the nonconformity which is being serviced to be repaired or brought into conformity with the warranty within a 30-day period. (See § 1793.2, subd. (b).) We note Kia's opening brief concedes that the lengthy time taken to repair a vehicle's defect may be used as a factor in determining there were more than a reasonable number of attempts.

3. *Faulty Electrical System*

During the life of the warranty, the Cofields presented their vehicle to the dealership for repairs at least 10 times for problems relating to the electrical system, including flickering or dimming taillights and headlights, an inoperative horn, malfunctioning or flickering instrument panel lights, dimming dashboard lights and dome lights blowing out. There was testimony to the effect that the dimming or fading of the headlights or taillights was substantial at times and created a safety concern. The first repair opportunity relating to electrical system issues was on April 21, 2011, at 5,962 miles, and the last was on December 26, 2012, at 58,077 miles.

On January 3, 2013, while the Cofields' vehicle was at the dealership for the last time during the warranty period for the recurring problem of flickering or dimming lights, the dealership opened a tech line with Kia corporate in an effort to find a solution. The dealership attempted a repair suggested by Kia, but the flickering of the lights persisted. Kia responded, "that's the best it will get." The dimming or fading of the vehicle's lights continued long after the warranty expired; the problem was never fixed.

C. Kia's Failure to Repair or Replace Vehicle

Kia did not offer to repurchase or replace the vehicle, even when there was a 50-day repair to the engine or after the continuing electrical system failures. On June 13, 2014, because the vehicle continued exhibiting significant problems, including electrical and air conditioning issues, the Cofields concluded from the entire repair history their vehicle was a lemon and contacted Kia's customer service line to request a refund or replacement. At that point, the vehicle's mileage was 138,000. Kia denied the request.

D. Kia's Motion in Limine

On November 18, 2014, the Cofields filed their complaint against Kia in the Kern County Superior Court, alleging violations of the Song-Beverly Act.

Trial commenced on October 19, 2016. Outside the presence of the jury and prior to opening statements, the trial court heard argument on Kia's motion in limine seeking the exclusion at trial of all post-warranty complaints and post-warranty repairs regarding the Cofields' vehicle. The post-warranty complaints and repair attempts arguably involved electrical issues that included problems with the air conditioning. In opposition to the motion, the Cofields' position was that the post-warranty complaints and repair attempts were relevant to show that Kia did not successfully remedy the underlying problems (e.g., the electrical system) during the warranty.

The trial court denied Kia's motion in limine. In its minute order ruling on the motion, the trial court noted the repair orders/invoices had previously been stipulated into evidence. The trial court also acknowledged the potential relevance of post-warranty repairs, explaining that post-warranty repairs which are the same as or causally related to those occurring during the warranty period may be relevant to whether there was a failure to conform the vehicle to warranty within the warranty period. The trial court further ruled that if, after presentation of all the evidence, the court decided the post-warranty repairs were not sufficiently related to repairs sought during the warranty period, it would strike the documents or instruct the jurors accordingly.

After hearing the evidence at trial, the trial court determined there was no evidence of a causal relationship between in-warranty repairs and post-warranty repairs to the air conditioning. Accordingly, before the case was submitted to the jury for deliberations, the jurors were told by special jury instruction to disregard the post-warranty air conditioning repairs when making their findings in the case.

E. The Jury's Verdict

On November 4, 2016, the jury returned a unanimous verdict in the Cofields' favor. On the special verdict form, the jury found that (i) Kia provided a written warranty with the Cofields' purchase of their 2010 Kia Forte, (ii) the vehicle had a defect or defects covered by the warranty that substantially impaired the vehicle's use, value, or safety to a reasonable buyer in the Cofields' situation, (iii) the defect or defects were not caused by the unauthorized or unreasonable use by the Cofields, (iv) Kia or its authorized repair facility failed to repair the vehicle to match the written warranty after a reasonable number of opportunities to do so, and (v) Kia failed to promptly replace or repurchase the vehicle.

With the above findings made, which would establish liability under the Song-Beverly Act, the special verdict form instructed the jury to make findings on damages. Regarding the amount of damages, the special verdict form first advised the jury "[t]he parties have stipulated to the fact that the total amount paid for the vehicle and amount still owing on the loan, and sales tax, license fees, registration fees, other official fees, minus non-manufacturer installed options is $34,219.18." The next question on the special verdict form, question No. 7, informed the jury that Kia was entitled to a deduction from the above damage amount based on the number of miles the vehicle was driven "between the time when Plaintiffs took possession of the vehicle and the time when they first delivered the vehicle to Kia Motors America or its authorized repair facility to repair the problem(s)." For purposes of this deduction, the jury inserted "1,674" as the number of miles driven by the Cofields before the vehicle was "first delivered" to the dealership for repair of a defect. By a mathematical formula set forth on the special verdict form, the jury computed the deduction for the Cofields' use of the vehicle as $249.34. Therefore, the jury found the Cofields' total actual damages, after the deduction, came to $33,969.84.

Finally, on the special verdict form, the jury specifically found that Kia "willfully" failed to repurchase or replace the vehicle. This finding allowed the jury to impose a civil penalty under the Song-Beverly Act, and the jury was instructed that such civil penalty may not exceed two times the total damages. In response to the question, "[w]hat amount, if any, do you impose as a penalty," the jury doubled the total damages by inserting a civil penalty amount of $67,939.68.

Based on the jury verdict, the trial court entered a judgment in favor of the Cofields in the total sum of $101,909.52, which judgment noted that costs would be separately determined by posttrial application.

On December 1, 2016, Kia filed a motion for a new trial. The trial court denied Kia's motion on January 6, 2017. Kia filed its notice of appeal from the judgment on January 6, 2017.

F. Motion for Attorney Fees

On February 3, 2017, the Cofields filed their motion for recovery of attorney fees as prevailing buyers, pursuant to section 1794 of the Song-Beverly Act. The notice of motion requested a total of $413,866.50 in attorney fees, which was comprised of a lodestar amount of $344,888.75, plus a proposed 1.2 multiplier in the sum of $68,977.75. Kia opposed the motion, arguing the fee amounts requested were duplicative and excessive. The trial court granted the Cofields' motion, but awarded a reduced amount of $296,055. In reaching that figure, the trial court made reductions for what it deemed to be duplicative or unnecessary attorney time, and also decided that no enhancement or multiplier would be applied because the fee rates, by themselves, adequately covered the quality of representation and degree of risk in this particular case. On June 14, 2017, Kia filed its appeal from the attorney fee order. As noted, the appeal from the attorney fee order has been consolidated with the instant appeal from the judgment.

DISCUSSION

I. Standard of Review

Kia's appeal makes several distinct claims of error, and our applicable standard of review will vary according to which claim is being addressed. Kia's contention that the special verdict was fatally defective is one of law and therefore subject to de novo review. (*Zagami, Inc. v. James A. Crone, Inc*. (2008) 160 Cal.App.4th 1083, 1092.) As to Kia's claim the trial court erred in denying its motion in limine, we review such evidentiary rulings for abuse of discretion. (*Christ v. Schwartz* (2016) 2 Cal.App.5th 440, 446–447.) In that regard, we recognize that a trial court's discretionary power is not unbounded but is subject to the limitations of legal principles governing the subject of its action, and an abuse of discretion will be found if there was no reasonable basis for the court's action. (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773; see *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566 [discretion abused if the court "exceed[ed] the bounds of reason, all of the circumstances before it being considered"].) However, even if an abuse of discretion is found, reversal is not warranted unless the error is shown to be prejudicial or to result in a miscarriage of justice. (*Christ v. Schwartz, supra*, 2 Cal.App.5th at p. 447; *Meeks v. AutoZone, Inc.* (2018) 24 Cal.App.5th 855, 877.)

The issue of whether a willful violation of the Song-Beverly Act occurred is an issue of fact reviewed on appeal under the substantial evidence test. "Whether a manufacturer willfully violated its obligation to … refund the purchase price is a factual question for the jury that will not be disturbed on appeal if supported by substantial evidence." (*Oregel v. American Isuzu Motors, Inc*. (2001) 90 Cal.App.4th 1094, 1104, citing *Jensen v. BMW of North America, Inc*. (1995) 35 Cal.App.4th 112, 134–136.) Under the substantial evidence standard, we view the evidence most favorably to the prevailing party, giving it the benefit of every reasonable inference and resolving all

conflicts in its favor. (*Oregel v. American Isuzu Motors, Inc*., *supra*, 90 Cal.App.4th at p. 1100.)

Finally, the trial court's attorney fee award is reviewed for an abuse of discretion. (*Goglin v. BMW of North America, LLC* (2016) 4 Cal.App.5th 462, 470.) We presume the trial court's attorney fee award is correct, recognizing that the experienced trial judge is the best judge of the value of professional services rendered in his or her court, and while his or her judgment is of course subject to review, it will not be disturbed unless we are convinced that it is clearly wrong. (*Doppes v. Bentley Motors, Inc*. (2009) 174 Cal.App.4th 967, 998.)

II. Overview of the Song-Beverly Act

The Song-Beverly Act is a remedial statute designed to protect consumers who have purchased products covered by an express warranty. (*Jensen v. BMW of North America, Inc*., *supra*, 35 Cal.App.4th at p. 121.) One of the most significant protections afforded by this legislation is found at section 1793.2, subdivision (d), which provides for a replacement or repurchase remedy under circumstances where the product was not repaired to conform to the warranty after a reasonable number of repair attempts. (*Robertson v. Fleetwood Travel Trailers of California, Inc*. (2006) 144 Cal.App.4th 785, 798.) These protections are expressly applicable to new motor vehicles, and in that regard section 1793.2 subdivision (d)(2) specifies as follows: "If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle … or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle."

If the manufacturer fails to comply with its obligations under the Song-Beverly Act, the buyer may bring an action for damages and other relief. (§ 1794, subd. (a).) If the buyer establishes the failure to comply was willful, the judgment may include a civil penalty against the manufacturer in an amount not greater than two times the actual damages. (§ 1794, subds. (c) & (e)(1).) If the buyer prevails in the action, he or she is entitled to an award of attorney fees and costs. (§ 1794, subds. (d) & (e)(1).)

A plaintiff pursuing an action under the Song-Beverly Act regarding a new motor vehicle covered by an express warranty has the burden to prove that (1) the vehicle had a nonconformity covered by the express warranty that substantially impaired the use, value or safety of the vehicle, (2) the vehicle was presented to an authorized representative of the manufacturer of the vehicle for repair, and (3) the manufacturer or its representative did not repair the nonconformity after a reasonable number of repair attempts. (*Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 152; *Oregel v. American Isuzu Motors, Inc., supra,* 90 Cal.App.4th at p. 1101.)

The reasonableness of the number of repair attempts is a question of fact to be determined by the jury in light of the circumstances, but at a minimum there must be more than one opportunity to fix the nonconformity. (*Silvio v. Ford Motor Co.* (2003) 109 Cal.App.4th 1205, 1208–1209 [statute refers to plural "attempts"].) Each occasion that an opportunity for repairs is provided counts as an attempt, even if no repairs are actually undertaken. (*Oregel v. American Isuzu Motors, Inc., supra*, 90 Cal.App.4th at pp. 1103–1104.)

The existence and nature of an alleged nonconformity are questions of fact for the jury. (*Robertson v. Fleetwood Travel Trailers of California, Inc., supra,* 144 Cal.App.4th at p. 801, fn. 12.) A "nonconformity" in a new motor vehicle is defined as "a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee." (§ 1793.22, subd. (e)(1).) This definition is synonymous with what the average person would understand by the term "defect." (*Ibrahim v. Ford*

Motor Co. (1989) 214 Cal.App.3d 878, 887 [jury may be instructed using term "defect"].) These terms (i.e., "nonconformity" or a warranted "defect") have a reasonable degree of latitude and may include "an entire complex of related conditions." (*Robertson v. Fleetwood Travel Trailers of California, Inc*., *supra,* 144 Cal.App.4th at p. 801, fn. 11.) A plaintiff is not obligated to identify or prove the cause of the vehicle's defect; rather, he is required only to prove the vehicle did not conform to the express warranty. (*Donlen v. Ford Motor Co., supra,* 217 Cal.App.4th at p. 149.)

III. Special Verdict Not Fatally Defective

Having summarized the Song-Beverly Act, we turn to Kia's claims of error. One of Kia's principal contentions on appeal is that the special verdict was fatally defective. Kia's arguments challenging the legal adequacy of the special verdict may be broken down into two parts: (1) the special verdict was invalid because it did not identify the precise defect or defects upon which liability was based; and (2) the special verdict was invalid because the only defect arguably identified therein was referenced by means of the jury's statement of a mileage amount in calculating the damage deduction, but no actionable defect was present at that mileage as a matter of law (i.e., when the Cofields had driven the vehicle 1,674 miles, or at 1,700 miles on the odometer). As explained below, both arguments are unconvincing and fail to demonstrate reversible error concerning the special verdict. Additionally, we agree with the Cofields that Kia's challenge to the special verdict was forfeited.

A. Failure to Identify the Vehicle's Nonconformity Did Not Invalidate the Special Verdict

In discussing this issue, we begin by describing the unique characteristics of a special verdict. "[A] special verdict is that by which the jury find the facts only, leaving the judgment to the Court. The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that nothing shall remain to the Court but to draw from them conclusions of law." (Code Civ. Proc., § 624.) "Unlike a general verdict (which merely

implies findings on all issues in favor of the plaintiff or defendant), a special verdict presents to the jury each ultimate fact in the case. The jury must resolve all of the ultimate facts … in the special verdict, so that 'nothing shall remain to the court but to draw from them conclusions of law.' [Citation.]" (*Falls v. Superior Court* (1987) 194 Cal.App.3d 851, 854–855.) A special verdict form is fatally defective if it does not allow the jury to resolve every controverted issue of fact. (*Trejo v. Johnson & Johnson* (2017) 13 Cal.App.5th 110, 136.) If a fact necessary to support a cause of action is not included in a special verdict, judgment on the cause of action cannot stand. (*Behr v. Redmond* (2011) 193 Cal.App.4th 517, 531.)

To be legally sufficient, a special verdict need only include findings on the *ultimate facts* necessary to establish the cause of action, claim or defense under consideration. (*Jarman v. HCR ManorCare, Inc.* (2017) 9 Cal.App.5th 807, 820 ["[a] special verdict requires only findings on 'ultimate facts' "]; *Markow v. Rosner* (2016) 3 Cal.App.5th 1027, 1047; *Falls v. Superior Court, supra,* 194 Cal.App.3d at pp. 854–855.) Ultimate facts are the conclusions of fact essential to a parties' case, are usually framed or defined by the elements of the cause of action or claim at issue, and are more general than the specific evidentiary facts which support such conclusions. (See Code Civ. Proc., § 624; 7 Witkin, Cal. Procedure (5th ed. 2008) Trial, § 346, p. 404 [a special verdict must call for ultimate facts, not evidentiary facts]; *Jarman v. HCR ManorCare, Inc., supra,* 9 Cal.App.5th at p. 820 [ultimate conclusions of fact more general than and encompassed underlying evidentiary facts]; *Stoner v. Williams* (1996) 46 Cal.App.4th 986, 1002 ["The elements of a cause of action constitute the essential or ultimate facts in a civil case"]; *Falls v. Superior Court, supra,* 194 Cal.App.3d at p. 855 [referring to elements of negligence cause of action and an issue of comparative fault necessary to liability as the "ultimate facts"]; see also *Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1540 [special verdict on single cause of action must "dispose of all elements necessary to establish liability" on that cause of action].)

The case of *Jarman v. HCR ManorCare, Inc*., *supra*, 9 Cal.App.5th 807, illustrates the distinction between ultimate and evidentiary facts. In that case, where the jury made findings of oppression, fraud or malice for purposes of awarding punitive damages, but failed to specify an officer, director or managing agent that ratified the conduct, the special verdict was held to be sufficient. (*Id*. at p. 820.) The Court of Appeal explained as follows: "A special verdict requires only findings on 'ultimate facts' [citation], and the specific finding [i.e., the particulars of ratification] would be arguably encompassed in the jury's more general finding that Manor Care itself acted with 'malice, oppression or fraud.' If Manor Care wished to have the jury give a more detailed breakdown of that general finding, it could have requested one." (*Ibid.*; accord, *Markow v. Rosner*, *supra*, 3 Cal.App.5th at p. 1047 [special verdict containing the ultimate facts of the plaintiff's sole cause of action for negligence was sufficient, and it did not need to include additional findings delineating which particular factual theory or theories of negligence were adopted, as that would improperly require the jury to decide evidentiary facts].)

Applying the above principles, we conclude the jury's special verdict in this case was sufficient.[3] The jury specifically found, in response to the questions presented (numbered 1 through 5) on the special verdict form, the following facts: (1) Kia gave the Cofields a written warranty with their purchase of a 2010 Kia Forte; (2) the vehicle had "a defect or defects covered by the warranty that substantially impaired the vehicle's use, value, or safety to a reasonable buyer in [the Cofields'] situation"; (3) the defect or defects were not caused by the unauthorized or unreasonable use by the Cofields; (4) Kia or its authorized repair facility failed to repair the vehicle to match the written warranty

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3 The special verdict form used in this case followed the model verdict form provided in the Judicial Council of California, Civil Jury Instructions (CACI) for Song-Beverly Act claims. (See CACI No. VF-3203.) Kia's counsel concedes it did not object to its use. Also, CACI No. VF-3203 contains essentially the same wording as CACI No. 3201, and the use of the latter instruction was expressly approved by Kia's counsel.

after a reasonable number of opportunities to do so; and (5) Kia failed to promptly replace or repurchase the vehicle. The above questions and the jury's responses thereto clearly established that Kia was liable under the Song-Beverly Act, while the remaining questions (numbered 6 through 9) on the special verdict form related to the amount of damages and whether to impose a civil penalty. As noted above, the essential factual elements to establish a cause of action under the Song-Beverly Act are as follows: (1) the vehicle had a nonconformity covered by the express warranty that substantially impaired the use, value or safety of the vehicle, (2) the vehicle was presented to an authorized representative of the manufacturer of the vehicle for repair, and (3) the manufacturer or its representative did not repair the nonconformity after a reasonable number of repair attempts. (*Donlen v. Ford Motor Co*., *supra*, 217 Cal.App.4th 138, 152; *Oregel v. American Isuzu Motors, Inc*., *supra*, 90 Cal.App.4th at p. 1101.) The jury's special verdict plainly and explicitly included these ultimate factual conclusions.

Not only was the special verdict itself sufficient, but the crucial findings by the jury that there was "a defect or defects" in the vehicle not repaired within a reasonable number of repair attempts was plainly supported by substantial evidence in the record.[4] The evidence of the recurring electrical system problem that was not resolved after more than 10 repair attempts plainly established an actionable basis for the Cofields' action under the Song-Beverly Act. In addition, the evidence of the multiple repair attempts to address the oil consumption or leakage problem, including Kia's possession of the vehicle for service over a prolonged period of 50 days, appears to have provided an additional factual basis to support the jury's finding of an actionable defect or defects.

Nevertheless, Kia insists the special verdict was fatally flawed because it did not identify the precise defect or defects establishing Kia's liability under the Song-Beverly

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[4] Kia does not make a substantial evidence challenge to the jury's findings on the elements of the Song-Beverly Act.

Act. We find this argument wholly unpersuasive. It was not necessary for the special verdict to detail which one or more of the vehicle's substantial defects were relied upon by the jury because, as we have explained, a special verdict need only contain findings of "ultimate facts." (*Jarman v. HCR ManorCare, Inc.*, *supra*, 9 Cal.App.5th at p. 820 [since only ultimate facts were required, punitive damage finding did not need to specify a particular officer, director, or managing agent ratified conduct]; *Markow v. Rosner*, *supra*, 3 Cal.App.5th at p. 1047 [special verdict on a single negligence cause of action did not need to address each of the alternative factual theories supporting the negligence claim].) Here, the essential elements or ultimate facts for establishing liability under the Song-Beverly Act were presented in the verdict form and resolved by the jury. That was all that was required.

If Kia thought it was necessary to have the jury give a more detailed breakdown of its ultimate conclusions of fact, it could have requested greater specificity on the verdict form. There is no indication in the record that it did so. In any event, Kia has failed to demonstrate by cogent legal argument that the special verdict's failure to identify the vehicle's precise defect or defects rendered the verdict fatally deficient or legally invalid. It is a fundamental rule that because a trial court's order or judgment is presumed to be correct, error must be affirmatively shown by the appellant based on adequate legal argument and citation to the record. (See *Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 564; *Yield Dynamics, Inc. v. TEA Systems Corp*. (2007) 154 Cal.App.4th 547, 556–557.) Kia has not met this burden. (See, e.g., *Fry v. Pro-Line Boats, Inc*. (2008) 163 Cal.App.4th 970, 974 [in a challenge to findings relating to boat defects on special verdict, the appellant did not meet affirmative burden of demonstrating error]; *Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, 1159 [after holding a defendant's failure to request a more detailed special verdict form forfeited issue on appeal, the court noted further that the special verdict itself was not shown to be legally defective where it simply was not "*specific enough* to render it amenable" to the defendant's interest in

pursuing certain arguments on appeal]; see also *Babcock v. Omansky* (1973) 31 Cal.App.3d 625, 630 [failure to object waived pinpointed verdict form, and in any event, general findings were adequate].) Moreover, as explained in our analysis above, all the ultimate facts were found by the jury in its special verdict in this case, and therefore no further or more detailed findings were necessary for the trial court to enter judgment. (See Code Civ. Proc., § 624.) For all these reasons, Kia's appeal on this ground is without merit.

In a variation on the same theme, Kia makes the novel claim it was legally imperative that the special verdict reflect there was agreement by *at least nine jurors* on the exact defect or defects constituting the actionable basis for recovery under the Song-Beverly Act. According to this line of argument, since the special verdict left open the possibility that nine jurors did not reach agreement on which of the vehicle's problems constituted the actionable defect(s), the special verdict is fatally defective. We cannot accept Kia's argument because it is not supported by legal authority. The only case cited by Kia on this question is *Stoner v. Williams*, *supra*, 46 Cal.App.4th 986, but that case is plainly contrary to Kia's position. In that case, the plaintiff sued the defendant for fraud, alleging the defendant made various intentional misrepresentations. (*Id*. at p. 992.) The Court of Appeal concluded that nine jurors did not have to agree on the same fraudulent act committed by the defendant, provided that at least nine of the jurors agreed that each element of the cause of action has been proved. (*Id*. at p. 1002.) As the Court of Appeal explained, the requirement is simply that "at least nine of twelve jurors agree that each element of a cause of action has been proved by a preponderance of the evidence." (*Ibid*.) To meet this requirement, "jurors need not agree from among a number of alternative acts which act is proved, so long as the jurors agree that each element of the cause of action is proved." (*Ibid*.) It is therefore unnecessary that the jurors "agree on exactly how each particular element of a particular cause of action is proved." (*Ibid*.) In the case before us, the jury reached unanimous agreement on each of the essential

elements of the Song-Beverly Act cause of action. Thus, not only nine, but all 12 jurors agreed the elements or ultimate facts were proven.

At this juncture, we also reject the thematic thread of complaint running throughout portions of Kia's opening brief: Namely, that the jury was erroneously allowed to conclude the Cofields' vehicle was a lemon and the Song-Beverly Act was violated simply because the vehicle had to be repaired numerous times. That broad assertion was not presented as a specific issue on appeal in Kia's opening brief, but in any event, it has not been affirmatively demonstrated by Kia. Rather, as we have shown, the special verdict properly called on the jury to make all the findings of ultimate fact necessary to establish Kia's liability under the Song-Beverly Act, and the jury clearly did so. Moreover, there *was* substantial evidence in the record to support the jury's finding that a violation occurred based on an actionable defect or defects—e.g., the electrical system failure. On this record, we cannot conclude the jury believed it could base its finding on the mere fact there were lots of repairs.[5]

Based on the foregoing discussion, we conclude Kia has failed to affirmatively demonstrate the special verdict in this case was fatally deficient due to a failure to specifically identify the particular defect or defects relied upon by the jury. Rather, as we have explained, the special verdict adequately made the necessary findings on the ultimate facts of the Song-Beverly action.

B. Inclusion of Mileage Amount Did Not Invalidate Special Verdict

Alternatively, Kia argues the special verdict is wholly invalid and must be set aside because, in the process of computing the damage offset available to Kia, the jury

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[5] Here, because evidence established the electrical system flaw was not repaired successfully by Kia, despite numerous repair efforts, we need not address the proposition sometimes alluded to by Kia that a defect which is eventually fixed, regardless of how many attempts were required, how long it took, or other circumstances involved, can never qualify as an actionable defect under the Song-Beverly Act.

inserted a mileage amount (i.e., 1,674 miles) that did not correspond to a potentially actionable defect. Rather, the repairs that would have been involved at that mileage amount (at 1,700 miles on the odometer) related to the bent wheel rims, which Kia maintains could not qualify under the Song-Beverly Act since evidence showed the wheel rim problem was reasonably repaired in only two visits if the hubcap repair is excluded. (See *Robertson v. Fleetwood Travel Trailers of California, Inc.*, *supra,* 144 Cal.App.4th at p. 799 [at a minimum there must be more than one opportunity to fix the nonconformity]; *Silvio v. Ford Motor Co*., *supra*, 109 Cal.App.4th at pp. 1208–1209.) Further, because the mileage amount set forth by the jury on the special verdict form was the only indication of a particular defect found by the jury, Kia argues it must be deemed the sole and exclusive defect for purposes of the *entire* special verdict. Therefore, according to Kia, since the wheel rim problem constituted the only defect identified by the jury and since that problem did not qualify as an actionable defect (as it was purportedly repaired in two tries), the entire special verdict is legally invalid.

In response to Kia's argument, the Cofields assert that the mileage set forth by the jury of 1,674 was supported by the record evidence. They argue the jury may have inferred that the need to replace the hubcap only a few days prior to the complaint about the wobbling wheels were interrelated or symptoms of the same problem. Thus, according to the Cofields, an evidentiary basis existed for concluding there was a requisite third repair visit relating to the wheel rim issues, and consequently it was reasonable for the jury to use the mileage amount of 1,674 for purposes of the damages offset.

In addressing this issue, we observe the particular context of the jury's selection of a mileage number was the computation of Kia's available damage offset. At that phase or juncture of the jury's sequential findings on the special verdict form, liability was already plainly established from the prior findings and an initial "subtotal" damage amount was stipulated to by the parties. On question No. 7 of the special verdict form,

for purposes of calculating the damage deduction, the jury was then asked, "What is the number of miles that the vehicle was driven between the time when Plaintiffs took possession of the vehicle and the time when they *first delivered* the vehicle to [Kia] or its authorized repair facility *to repair the problem*(*s*)?" In response, the jury inserted "1,674 miles."[6]

We reject Kia's argument that the mere insertion of this mileage amount on the form invalidated the entire special verdict. Even assuming for the sake of argument that Kia is correct that the wheel rim issue cannot be construed as an actionable defect, the jury's erroneous selection of the mileage amount of 1,674 would have no effect on Kia's liability under the Song-Beverly Act. As our discussion hereinabove makes clear, it was unnecessary for the jury to identify the specific defect or defects that were actionable. Only the ultimate facts were needed, and as we have explained, the special verdict sufficiently stated all the essential elements or ultimate facts necessary for the Cofields to recover under the Song-Beverly Act. Therefore, Kia's attempt to read the entire special verdict as though the wheel rim issue were the only defect relied on by the jury in this case is an unreasonable construction of the verdict. Instead, it appears the jury simply believed this mileage number corresponded to the *first* delivery of the vehicle to address one of the purported defects or problems with the vehicle. Even if a different mileage amount should have been selected, the indication of a "first" instance of seeking to repair a defect does not reflect that the jury believed it was the sole and only defect, particularly in this case where the evidence at trial plainly demonstrated other substantial defects or problems emerged later (i.e., the electrical system issue and the oil consumption issue).[7]

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[6] Since the vehicle already had 26 miles on the odometer when the Cofields purchased it, the jury's mileage number would indicate the odometer was at approximately 1,700 miles when it was "first delivered" to the dealership to repair "the problem(s)."

[7] There was testimony at trial indicating that the first repair relating to the electrical system issue was at 5,962 miles, and the first repair for the oil consumption issue was at

When we accord to the special verdict this reasonable construction, Kia's argument that the mileage amount used by the jury rendered the entire verdict fatally defective fails. (See *Woodcock v. Fontana Scaffolding & Equip. Co*. (1968) 69 Cal.2d 452, 456–457 [appellate court may make a correct interpretation of special verdict to uphold it]; accord, *Zagami, Inc. v. James A. Crone, Inc*., *supra*, 160 Cal.App.4th at p. 1092; 7 Witkin, Cal. Procedure (5th ed. 2008) Trial, § 370, p. 431.)[8]

C. Forfeiture of Issues Relating to Special Verdict

The Cofields contend that Kia's failure to object in the trial court forfeited on appeal the issue of the allegedly deficient special verdict. We agree.

Generally, if a special verdict is allegedly defective due to an ambiguity or a lack of specificity, a party's failure to seek clarification of the verdict before the jury is discharged results in a forfeiture of the issue on appeal. (*Keener v. Jeld-Wen, Inc*. (2009) 46 Cal.4th 247, 263–265; *Little v. Amber Hotel Co*. (2011) 202 Cal.App.4th 280, 299; *Jensen v. BMW of North America, Inc.*, *supra*, 35 Cal.App.4th at p. 131.) We believe that was the case here. Based on the language of the special verdict form, Kia was on notice that for purposes of liability under the Song-Beverly Act, the special verdict form did not require the jury to specifically identify the actionable defect or defects relied upon, although it did require a mileage amount to be set forth for purposes of the damage offset. When the jury rendered its special verdict in this case making all the essential findings of

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approximately 30,000 miles. Presumably, if the 1,674 mileage is not available, the *first* delivery of the vehicle for an actionable defect would be at 5,962 miles.

[8] In light of our holding that Kia's attack on the validity of the entire special verdict fails, the fallout of any potential error in the particular mileage amount used by the jury would be, at most, a relatively modest miscalculation of the mileage deduction for purposes of computing total damages. The instant appeal, however, does not specifically present that damage issue as a ground of appeal. Therefore, we need not address any potential damage issue relating to the mileage selection because it has been forfeited on appeal. (*Paulus v. Bob Lynch Ford, Inc*. (2006) 139 Cal.App.4th 659, 685 [issue not raised in opening brief waived].)

ultimate fact to establish liability, but which *also* set forth "1,674" miles for purposes of the damage offset, the special verdict arguably became *ambiguous or uncertain* regarding which of the other nonconformities or defects evidenced at trial were being relied upon by the jury in finding Kia liable under the Song-Beverly Act.[9] If Kia needed clarification or greater specificity on that matter, a need that would have been apparent at the time of the verdict, it could have advised the trial court that additional findings or clarification from the jury was necessary. Kia did not do so, even though any uncertainty could have been adequately resolved and/or clarified through further deliberation. Under the circumstances, we conclude that Kia forfeited any objection to the special verdict by failing to object before the court discharged the jury. (*Jensen v. BMW of North America, Inc*., *supra*, 35 Cal.App.4th at p. 131.) This forfeiture provides an additional ground to our other reasons, discussed hereinabove, for rejecting Kia's challenges to the special verdict.

IV. No Reversible Error Shown as to Denial of Motion in Limine

Kia argues the trial court erred in denying its motion in limine. We conclude that Kia has failed to demonstrate the trial court's evidentiary ruling constituted an abuse of discretion, but even if an error did occur, Kia has also failed to show it was prejudicial or resulted in a miscarriage of justice. (See *Christ v. Schwartz*, *supra*, 2 Cal.App.5th at pp. 446–447 [stating abuse of discretion standard of review].)

Kia's motion in limine sought to exclude evidence at trial of all post-warranty complaints and post-warranty repairs regarding the Cofields' vehicle. The motion referenced eight post-warranty repair orders, which ranged from 85,932 to 125,830 mileage on the odometer. The matters set forth in the repair orders were characterized by

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9 The ambiguity would arguably exist because, in Kia's view of the matter: (1) the wheel rim repair occurring at 1,700 miles could not constitute an actionable defect, and (2) there were other problems that potentially qualified as actionable defects (i.e., the electrical system issue).

the Cofields' counsel as involving electrical issues, and the most serious problems referred to therein concerned the air conditioning. Among other things, the repair orders indicated an air conditioning connector had melted and that the air conditioning system or its components were repeatedly shorting out. Other ostensibly electrical problems included a malfunctioning cruise control button and a window switch. In their opposition to Kia's motion, the Cofields argued that the post-warranty repair orders were relevant to show that Kia did not successfully remedy the underlying problems (e.g., the electrical system) during the warranty period.

The trial court denied Kia's motion, thereby permitting the jury to hear testimony relating to the post-warranty complaints and repairs. In its minute order ruling on the motion, the trial court noted that such post-warranty repairs may be relevant to whether there was a failure to conform the vehicle to warranty within the warranty period. The trial court indicated from the bench that the subject evidence would be allowed based on the court's review of the threshold showing in connection with the motion (i.e., the repair orders and the Cofields' opposition), but also acknowledged the issue of whether a causal relationship existed between the in-warranty repairs and the post-warranty repairs was disputed, and thus the court would reserve the right to strike the evidence and admonish the jury based on the expert testimony and other evidence presented at trial. In that regard, the trial court's ruling stated that if, after presentation of the totality of the evidence, the court determined that any of the post-warranty repairs were not causally related to repairs sought during the warranty period, it would strike the documents or instruct the jurors accordingly.

During the trial, the Cofields' automotive expert, Darrell Blasjo, testified that after the warranty period expired, there were an additional five to seven times in which the vehicle was presented to the dealership to address ongoing electrical system problems. Although not specific, his opinion was that these post-warranty electrical issues reflected a continuation of the problem that had been occurring with the vehicle during the

warranty period. However, in cross-examination, Mr. Blasjo conceded that he never analyzed the actual root cause of the air conditioning malfunctions that had occurred post-warranty. After hearing the expert testimony and other evidence at trial, the trial court concluded there was no causal relationship shown between in-warranty repairs and post-warranty repairs to the air conditioning. Accordingly, before the trial court sent the matter to the jury for deliberations, the jurors were explicitly instructed to disregard the post-warranty air conditioning repairs when making their findings in the case.

On this record, we believe that Kia has failed to demonstrate a clear abuse of discretion. To reiterate, Mr. Blasjo testified some of the post-warranty matters presented to the dealership for repair reflected a continuation of the electrical system problems that had occurred during the warranty period. As the case of *Donlen v. Ford Motor Co., supra,* 217 Cal.App.4th 138 recognized, "[p]ostwarranty repair evidence may be admitted on a case-by-case basis where it is relevant to showing the vehicle was not repaired to conform to the warranty during the warranty's existence." (*Id*. at p. 149.) That is, symptoms reappearing at a later time may be relevant to determining whether "a fundamental problem in the vehicle was ever resolved." (*Ibid*., citing *Jensen v. BMW of North America, Inc., supra,* 35 Cal.App.4th at pp. 134–135.) When the trial court made its order denying the motion, it reasonably appeared there were potentially further electrical issues reflected on the post-warranty repair orders, and the question of whether an adequate relationship existed to the in-warranty repairs/defects would ultimately come down to the experts' testimony at trial. Under the circumstances, we believe a reasonable basis existed for the trial court's ruling and no abuse of the court's discretion has been shown. (See *Jiagbogu v. Mercedes-Benz USA* (2004) 118 Cal.App.4th 1235, 1245–1246 [where in an Evid. Code, § 402 hearing, experts differed on whether certain car malfunctions after the warranty period could be related to malfunctions during the warranty period, no abuse of discretion in denying in limine motion to exclude evidence].)

Moreover, even assuming for the sake of argument that the trial court erred in allowing the jury to hear the post-warranty repair evidence, Kia has failed to demonstrate prejudice or a miscarriage of justice. Some of the apparent electrical issues reflected on the subject repair orders (e.g., switches on window, cruise control button, etc.) were at most merely cumulative to the considerable evidence of the existence of an ongoing electrical system flaw and of the numerous repair attempts regarding the same *during the warranty period*. As to the air conditioning repairs, Kia has failed to persuade us that the jury would have been unable to disregard that evidence, as instructed by the trial court, in deciding the issues in this case. Moreover, the general rule is that juries are *presumed* to follow a trial court's limiting instructions. (*Phillips v. Honeywell Internat. Inc*. (2017) 9 Cal.App.5th 1061, 1081.) Here, we discern no reason to doubt the jury would faithfully follow the trial court's instruction on this matter.

Based on the foregoing, we conclude that Kia has failed to affirmatively demonstrate the trial court clearly and prejudicially abused its discretion when it denied Kia's motion in limine.

V. No Error Shown Regarding Finding of a Willful Violation

Under the Song-Beverly Act, where a defendant violated its obligations under the act *willfully*, the jury may impose a civil penalty. Under relevant case law, a finding of willfulness may be made where the defendant "knew of its obligations but intentionally declined to fulfill them." (*Ibrahim v. Ford Motor Co., supra*, 214 Cal.App.3d at p. 894.) On the other hand, a violation is not willful if the defendant's failure to replace or refund was the result of a good faith and reasonable belief the facts imposing the statutory obligation were not present. (*Kwan v. Mercedes-Benz of North America, Inc*. (1994) 23 Cal.App.4th 174, 185.)

Kia challenges the jury's willfulness finding, but a question exists whether the issue was properly raised for purposes of appeal. Kia's opening brief, in an introductory section entitled "Issues on Appeal and Standards of Review," lists its contentions on

appeal as including the issue of whether the jury erred in finding a *willful* violation of the Song-Beverly Act. In mentioning this as one of three issues to be addressed in the appeal, Kia's opening brief acknowledges the standard of review is whether the finding of willfulness was supported by substantial evidence, and Kia briefly states its conclusion (but it is only that) that there was no evidence to support any violation of the Song-Beverly Act "let alone that it did so willfully." However, in the argument or discussion portion of Kia's opening brief, where one would expect to find an effort to substantiate Kia's contention on this issue through legal and factual analysis, there is almost nothing. That is, Kia's opening brief fails to set forth any cogent discussion explaining from the record the basis for its assertion there was no substantial evidence to support a finding of willfulness. Instead, the only mention of willfulness appears in the context of Kia's summary overview of the law, where a brief comment is made that there could be no willful violation here because the special verdict failed to identify a single legally actionable defect under the Song-Beverly Act.

On the issue of whether the evidence was insufficient to support the jury's finding of willfulness, we conclude Kia failed in its opening brief to adequately raise that issue and affirmatively demonstrate error on that ground, as was its burden as appellant. (See *Yield Dynamics, Inc. v. TEA Systems Corp., supra,* 154 Cal.App.4th at pp. 556–557 [because a trial court's judgment is presumed correct, an appellant must affirmatively show prejudicial error based on adequate legal argument and citation to the record]; *Paulus v. Bob Lynch Ford, Inc., supra,* 139 Cal.App.4th at p. 685 [issues must be adequately raised in opening brief].) Indeed, the perfunctory and conclusory nature of the opening brief's mention of this issue was serious enough to result in its forfeiture. "We need not address points in appellate briefs that are unsupported by adequate factual or legal analysis." (*Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com*. (2006) 135 Cal.App.4th 793, 814.) When points are presented in a perfunctory manner, without adequate analysis, we may pass over them

and treat them as forfeited. (*Tilbury Constructors, Inc. v. State Comp. Ins. Fund* (2006) 137 Cal.App.4th 466, 482*; People v. Harper* (2000) 82 Cal.App.4th 1413, 1419, fn. 4 [argument raised in perfunctory fashion is waived]; *People v. Stanley* (1995) 10 Cal.4th 764, 793 [this forfeiture rule especially applicable "when an appellant makes a general assertion, unsupported by specific argument, regarding insufficiency of evidence"]; *Landry v. Berryessa Union School Dist*. (1995) 39 Cal.App.4th 691, 699–700.) That is the case here.

In any event, even if there had been no forfeiture of this issue, we agree with the Cofields' position that the evidence at trial was adequate to support the jury's finding of willfulness. Among other pertinent evidence, there was testimony indicating multiple failed attempts to correct a continuing electrical system defect, including an unsuccessful repair effort at 58,077 miles, after which Kia indicated "that's the best it will get." Further, James Holt, Kia's National Manager of Consumer Affairs, admitted that Kia was aware of the above history of repairs concerning the electrical system, as well as of the previous oil consumption problem with the engine that had encompassed numerous repair attempts culminating in the dealership's 50-day possession of the vehicle in its service center to undertake extensive engine repairs. At no time were Song-Beverly Act remedies of repurchase or replacement ever offered by Kia to the Cofields. On this record, we cannot conclude there was no substantial evidence upon which to reasonably infer willfulness. Therefore, even assuming it was not forfeited, Kia's substantial evidence contention fails.

Finally, Kia's reply brief argues the finding of willfulness cannot be sustained because the special verdict was allegedly fatally defective. Kia's opening brief had also alluded to the special verdict's failure to identify an actionable defect as a ground to negate the willfulness finding. Such arguments are merely a carryover of the same defective verdict claims raised by Kia that we have discussed and expressly rejected in

part III of this opinion. For the reasons already explained herein, the special verdict was *not* fatally defective. Accordingly, Kia's arguments on this ground fail.

Based on the foregoing, we conclude that Kia has failed to affirmatively demonstrate reversible error regarding the jury's finding of willfulness.

VI. Attorney Fees Challenge Not Established

A prevailing buyer in a lawsuit under the Song-Beverly Act is entitled to an award of reasonable attorney fees. (§ 1794, subds. (d) & (e)(1).) Section 1794, subdivision (d), states the prevailing buyer "shall be allowed … to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (See also *Doppes v. Bentley Motors, Inc.*, *supra*, 174 Cal.App.4th at p. 997 [§ 1794 subd. (d) requires the attorney fees to be based on "actual time expended" and to have been "reasonably incurred"].) The attorney fee provision advances the remedial purposes of the Song-Beverly Act. (*Robertson v. Fleetwood Travel Trailers of California, Inc.*, *supra*, 144 Cal.App.4th at p. 817.) "By permitting prevailing buyers to recover their attorney fees in addition to costs and expenses, our Legislature has provided injured consumers strong encouragement to seek legal redress in a situation in which a lawsuit might not otherwise have been economically feasible." (*Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 994.)

In the trial court, the prevailing buyer has the burden of showing that the fees incurred were reasonably necessary to the conduct of the litigation and were reasonable in amount. (*Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 104.) This is usually accomplished by submitting verified itemized billing statements and declarations of the attorneys for the trial court to consider, which was what occurred here. (See *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 396 [verified time statements of the attorneys, as officers of the court, are entitled to

credence in the absence of a clear indication the records are erroneous].) Under the lodestar method of determining fees, the trial court first determines the objective lodestar amount based on actual time spent and reasonable hourly compensation for each attorney. (*Robertson v. Fleetwood Travel Trailers of California, Inc*., *supra*, 144 Cal.App.4th at p. 819.) In its discretion, the trial court may augment or reduce the loadstar amount, usually by means of a multiplier, based on various factors. (*Id*. at pp. 819–822.)

Here, the Cofields' motion for attorney fees requested a total fee award of $413,866.50, which consisted of a lodestar amount of $344,888.75, plus a requested multiplier of 1.2 in the sum of $68,977.75. Kia opposed the motion, arguing the fee amounts requested by the Cofields were duplicative, unreasonable and excessive, and that application of a multiplier enhancement was unwarranted in this case. The trial court granted the Cofields' motion, but awarded a reduced amount of $296,055. In reaching that figure, the trial court made reductions for what it deemed to be duplicative or unnecessary attorney time, and also decided that no enhancement or multiplier would be applied because the fee rates, by themselves, adequately covered the quality of representation and degree of contingent risk in this particular case. The most significant reduction made by the trial court was "$45,250 for 90.5 hours at $500/hour" relating to attorney Rosenstein, one of the Cofields' trial attorneys. The trial court's order explained: "The court has taxed the 'attend trial' time and related 'travel' time of [attorney] Rosenstein. [Attorney] Altman had been associated as lead trial counsel. When a conflict developed with his calendar, he was replaced with [attorney] Rosenstein. Then [attorney] Altman became available again, and plaintiff chose to again proceed with [attorney] Altman, backed-up by [attorney] Rosenstein. [Attorney] Kirnos is the second chair to any lead trial counsel throughout. This court does not consider resulting dual lead trial counsel to be a reasonable cost incurred to be imposed on defendant."

We review an award of attorney fees under section 1794, subdivision (d), for abuse of discretion. (*Doppes v. Bentley Motors, Inc*., *supra*, 174 Cal.App.4th at p. 998.)

The awarding of reasonable attorney fees is a highly fact-specific matter best left to the discretion of the trial court (*Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 581), and the court's order regarding attorney fees is presumed to be correct. (*Doppes v. Bentley Motors, Inc*., *supra*, 174 Cal.App.4th at p. 998.) Accordingly, we must affirm an award of attorney fees absent a showing that the trial court *clearly* abused its discretion. (*Jones v. Union Bank of California* (2005) 127 Cal.App.4th 542, 549.) We recognize that the " ' "experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong." ' " (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.)

In the present appeal, Kia challenges the trial court's award of attorney fees as excessive. Kia makes several arguments to substantiate this claim. First, Kia contends the attorney fee award is disproportionately large in comparison to the damages awarded to the Cofields (which consisted of $33,969.84 in general damages and $67,939.68 in penalties). We disagree. The attorney fee award does not appear to be grossly disproportionate to the total damage award (i.e., $101,909.52) in a heavily litigated consumer warranty case such as this one, and Kia has failed to persuade us otherwise. Moreover, although the amount of damages recovered in a case is a factor that may be considered in evaluating the reasonableness of an attorney fee request, it is not a controlling factor. (*Niederer v. Ferreira* (1987) 189 Cal.App.3d 1485, 1507–1508 [other factors such as the amount of time spent on the case, the complexity of the litigation, and the skill and effort required of the attorneys may justify the attorney fee award even if it is large in proportion to the amount of damages awarded].) A rigid proportionality requirement would also be difficult to harmonize with the specific wording of section 1794 subdivision (d), which states the prevailing buyer is entitled to recover "attorney fees *based on actual time expended*," so long as reasonably incurred. (Italics added; see also *Drouin v. Fleetwood Enterprises* (1985) 163 Cal.App.3d 486, 493 [in action

involving federal consumer warranty statute with parallel wording that attorney fees shall be calculated upon "actual time expended," the appellate court rejected the argument that "the amount of attorneys fees awarded by the court [was] excessive when compared to plaintiff's recovery"].) In any event, while it is true the attorney fee award here was considerably larger than the damages recovered by the Cofields, Kia has failed to demonstrate that this fact, by itself, constituted an abuse of discretion. In challenging an attorney fee award, "[g]eneral arguments that fees claimed are excessive" do not suffice. (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn*. (2008) 163 Cal.App.4th 550, 564.) Where, as here, the appellant does not attempt to establish that particular items or categories of fees were not reasonably incurred, it has not met its burden of showing that the trial court abused its discretion on the ground that the award was manifestly excessive in the circumstances. (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1509.)

In *Graciano v. Robinson Ford Sales, Inc*. (2006) 144 Cal.App.4th 140 (*Graciano*), a statutory consumer protection case where the trial court had imposed a negative multiplier effectively capping Graciano's fee recovery based on the size of the settlement in relation to the lodestar amount, the Court of Appeal concluded for several reasons the trial court had erred. (*Id*. at pp. 145, 161–165.) In so holding, one of the reasons offered by the Court of Appeal was the following: "[B]ecause this matter involves an individual plaintiff suing under consumer protection statutes involving mandatory fee-shifting provisions, the legislative policies are in favor of Graciano's recovery of all attorney fees reasonably expended, without limiting the fees to a proportion of her actual recovery." (*Id*. at p. 164.) The court in *Graciano* elaborated that fee awards in consumer protection actions are analogous to attorney fee recoveries granted in civil rights cases, where a strict rule of proportionality would not be applied because it would discourage attorneys from ever accepting cases on behalf of individuals with meritorious civil rights claims but relatively modest potential damages. (*Ibid*.) We think the same rationale would apply

here, where the Song-Beverly Act's attorney fee provision is meant to encourage consumers "to seek legal redress in a situation in which a lawsuit might not otherwise have been economically feasible." (*Murillo v. Fleetwood Enterprises, Inc.*, *supra*, 17 Cal.4th at p. 994.) Thus, the consumer protection policy and remedial nature of the Song-Beverly Act tend to provide further confirmation for our conclusion that Kia has failed to adequately demonstrate the trial court's broad discretion was abused simply because of the relative size of the attorney fee award ($296,055) in comparison to the compensatory damages ($33,969.84) and civil penalties ($67,939.68) awarded in this case (a total recovery of $101,909.52).

Along the same lines, Kia also asserts the disproportionality between the damages and the amount of attorney fees is so great, or the attorney fee award itself is so large, that the amount awarded in this case "shocks the conscience" and thereby constitutes an abuse of discretion. An attorney fee award may be set aside " 'if the amount awarded is so large … that it shocks the conscience and suggests that passion and prejudice influenced the determination.' [Citation.]" (*Loeffler v. Medina*, *supra*, 174 Cal.App.4th at p. 1509.) "An abuse of discretion is shown when the award shocks the conscience or is not supported by the evidence." (*Jones v. Union Bank of California*, *supra*, 127 Cal.App.4th at pp. 549–550.) " '[A]n experienced trial judge is in a much better position than an appellate court to assess the value of the legal services rendered in his or her court, and the amount of a fee awarded by such a judge will therefore not be set aside on appeal absent a showing that it is manifestly excessive in the circumstances.' [Citation.]" (*Loeffler v. Medina*, *supra*, 174 Cal.App.4th at p. 1509.)

Kia's assertion that the amount of attorney fees awarded shocks the conscience is unpersuasive for the same reasons discussed above relating to the attorney fee awards' disproportionality with damages. Kia's generalized arguments fail to establish the amount of fees awarded were manifestly excessive in the circumstances. In addition, we find it significant that the trial court, after considering Kia's arguments that the requested

attorney fees were excessive, duplicative or unnecessary, ultimately reduced the Cofields' requested fees by a considerable amount. Where, as here, a trial court carefully considers the evidence and argument, and then exercises its discretion to significantly reduce the amount originally requested by the moving party, it tends to weigh against drawing a conclusion on appeal that the amount so awarded shocks the conscience. (*Loeffler v. Medina*, *supra*, 174 Cal.App.4th at p. 1509, fn. 15; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1134.) On this record and Kia's overly general assertions, we are unable to conclude that the fee award shocks the conscience.

Finally, Kia notes that about 18 months prior to trial, it offered to settle the case for $25,730.44, which Kia notes is "very close" to the amount of compensatory damages awarded to the Cofields. This argument is unpersuasive for two reasons. First, the amount offered in settlement would not even cover the admitted purchase price of the vehicle as financed (approximately $35,157.28), and it was obviously far below the monetary sum the Cofields recovered at trial. Second, Kia has not explained how the settlement offer reasonably indicates an abuse of discretion on the part of the trial court.

For all the reasons outlined above, we conclude that Kia's challenge to the attorney fee award fails.

DISPOSITION

The judgment and order of the trial court are affirmed. Costs on appeal are awarded to the Cofields.

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LEVY, Acting P. J.

WE CONCUR:

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SMITH, J.

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MEEHAN, J.